LOS/PCN/SCN.3/1993/CRP.17/Add.1
15 January 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR
THE INTERNATIONAL SEABED
AUTHORITY AND FOR THE
INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Special Commission 3
Eleventh session
Kingston, Jamaica
22 March-2 April 1993

DRAFT FINAL REPORT OF SPECIAL COMMISSION 3

Addendum

Explanatory note

1. The present addendum contains document LOS/PCN/SCN.3/WP.6/Add.8/Rev.1, which is the revision of document LOS/PCN/SCN.3/WP.6/Add.8 dealing with labour, health and safety standards. At the time of publication of the draft final report of Special Commission 3, a revised text of the document had not been agreed upon by all participating delegations. Consensus was reached on a revised text during the further consultations held at the New York session of the Preparatory Commission in August 1992. The revised text was endorsed by the Special Commission and it is being issued pursuant to the statement to the plenary by the Chairman of Special Commission 3 (see LOS/PCN/L.106, para. 4).

2. This addendum also includes the documents of Special Commission 3 containing proposals for amendments submitted by various States and interest groups to the Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area.

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I. LABOUR, HEALTH AND SAFETY STANDARDS

LOS/PCN/SCN.3/WP.6/Add.8/Rev.1
15 January 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR
THE INTERNATIONAL SEABED
AUTHORITY AND FOR THE
INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Special Commission 3
Eleventh session
Kingston, Jamaica
22 March-2 April 1993

DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA*

PART XI

LABOUR, HEALTH AND SAFETY STANDARDS

Working paper by the Secretariat

Article 1

Scope of these regulations**

These regulations apply to the labour, health and safety standards for carrying out activities in the Area.

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* Changes to the original working paper are underscored in the text.

** The draft regulations on labour, health and safety standards dealing with obligations and responsibilities of the sponsoring State, liability, penalties, application to the Enterprise, review of rules, regulations and procedures and disputes settlement will be harmonized with those applying to other parts of the draft regulations on prospecting, exploration and exploitation of polymetallic nodules in the Area, particularly to part VIII (LOS/PCN/SCN.3/WP.6/Add.5/Rev.1).

Article 158

Non-discrimination and protection of workers

1. Activities in the Area shall be carried out under such conditions that the workers employed in such activities are afforded adequate protection against discrimination in employment on the ground of race, colour, sex, religion, political opinion, national extraction or social origin, as well as in the fields of occupational safety and health, labour relations including freedom of association, conditions of work, social security, employment security and living conditions at the work site.

2. The Authority shall establish rules and regulations in the fields referred to in paragraph 1 drawing in particular upon conventions and recommendations of the International Labour Organisation and other competent international organizations after consulting, as appropriate, the International Labour Organisation and other competent international organizations. These rules and regulations shall be reviewed periodically.

3. Each contractor shall, in carrying out activities in the Area, observe and comply with the rules and regulations established by the Authority in accordance with paragraph 2, without prejudice to applicable national legislations establishing higher standards of protection for workers.

Article 159

Discrimination

Deleted.

Article 160

Safety of vessels 1/

1. The Council, in consultation with the competent international organization, shall establish:

(a) A list of applicable rules and regulations of the competent international organization concerning the safety of vessels, including the safety of life at sea and the prevention of collisions.; and

(b) Additional rules, regulations and procedures, if deemed necessary.

2. Each contractor shall comply with rules and regulations referred to in paragraph 1.

1/ Art. 146, A3/17(1)(b)(xii).

3. Each vessel used for carrying out activities in the Area shall:

(a) Possess current valid certificates issued under relevant international conventions for safety of life at sea to which the vessel's flag State is a party; or

(b) If the vessel's flag State is not a party to such conventions, meet all applicable structural and safety requirements contained in the published rules of a member of the International Association of Classification Societies.

Article 161

Safety of installations 2/

Each contractor shall ensure that:

(a) Installations used for carrying out activities in the Area shall at all times be kept in a safe and proper condition in compliance with the applicable international regulations concerning the safety of life at sea and the rules, regulations and procedures of the Authority;

(b) Installations shall:

(i) Be designed, equipped, constructed and operated with proper regard for the safety of personnel and protection of the marine environment;

(ii) Have satisfactory access and evacuation facilities;

(iii) Be adequately equipped with effective disaster response, fire-fighting and rescuing equipment;

(iv) Be equipped with telecommunications for necessary communication;

(c) Planning of new installations and new equipment, and modifications of existing installations and equipment, shall give consideration to equipment currently available and new technology as necessary, thereby maintaining a safety level concurrent with technological development.

2/ The term "installations" is defined in the draft regulations on accommodation of activities in the Area to include vessels (LOS/PCN/SCN.3/WP.6/Rev.1, art. 2).

Article 162

Safety contingency plans 3/

1. Each contractor shall prepare safety contingency plans for installations used for carrying out activities in the Area. Such plans shall be submitted in writing for the Authority's approval prior to the operation of any such installation. The contingency plans shall establish appropriate measures for dealing effectively with contingencies and, in particular, shall include arrangements for:

(a) The immediate raising of alarm in the area of the activities;

(b) The rescue of persons;

(c) Immediate notification to the Secretary-General and, where appropriate, neighbouring coastal States;

(d) A continuing flow of full information, relating to particulars of the contingency measures already taken and further action required, to the Secretary-General;

(e) As appropriate, cooperation among contractors to respond to a contingency; and

(f) Periodic and regulation drills and exercises to ensure that all required installations, facilities, equipment, materials and supplies are in proper working order and that the contractor's personnel have been properly trained in their uses.

2. Each contractor shall ensure that workers employed in carrying out activities in the Area are thoroughly familiar with such plans and are properly qualified and have adequate training and practice in carrying them out.

Article 163

Annual reports

Deleted.

3/ See article 112 of the draft regulations for the protection and preservation of the marine environment from unacceptable changes resulting from activities in the Area (LOS/PCN/SCN.3/WP.6/Add.5/Rev.1).

Article 164

Notification and reports of incidents 4/

1. Each contractor shall immediately notify the Secretary-General of any incident or immediate threat thereof arising from its activities in the Area, including any incident relating to vessels or installations, which affects or is likely to affect seriously the safety of human life and of installations.

2. The contractor shall promptly submit to the Secretary-General a report containing the details of such incident, including, inter alia:

(a) the location of the incident;

(b) the effect such incident has had and is likely to have on the safety of human life, including the nature and extent of any injuries sustained;

(c) the description of the action being taken to prevent, contain, minimize and remedy any harm incurred; and

(d) other information as may be required by the relevant rules, regulations and procedures.

Article 165

Emergency orders 5/

1. In the event that the Secretary-General receives a notification in accordance with article 164, paragraph 1, he shall transmit it immediately to the Council and the Legal and Technical Commission.

2. Pending any action by the Council, the Secretary-General may take any immediate measures which should be practical and reasonable in the circumstances to ensure the effective protection of human life and the safety of installations. Any such measures shall be effective until action is taken by the Council in accordance with paragraphs 4 and 5 or for an initial period of 15 days.

3. The Legal and Technical Commission shall meet as soon as possible after having been notified and shall consider, taking into account the measures already taken by the contractor and by the Secretary-General, which measures are necesary for the effective protection of human life. It shall make relevant recommendations to the Council.

4/ This article could be combined with article 114 of the draft regulations on the marine environment (LOS/PCN/SCN.3/WP.6/Add.5/Rev.1).

5/ See article 117 of the draft regulations on the marine environment (LOS/PCN/SCN.3/WP.6/Add.5/Rev.1).

4. After having received the recommendations of the Legal and Technical Commission, the Council shall meet as soon as possible and decide on the recommendations submitted by the Legal and Technical Commission.

5. Taking into account the recommendations of the Legal and Technical Commission, the Council may issue emergency orders which may include orders for the suspension of adjustment of operations to ensure the effective protection of human life.

6. Within the period specified in paragraph 2 the contractor shall provide information pursuant to paragraph 2 (c) of article 164.

7. If within the period specified in paragraph 2 the Council has not taken action in accordance with paragraphs 4 and 5, the Secretary-General shall consider the information provided and make a decision as to whether the measures referred to in paragraph 1 shall remain in effect. If the Secretary-General decides that these measures shall remain in effect, they shall be effective until action is taken by the Council in accordance with paragraphs 4 and 5 but in any event not longer than 30 days after the Secretary-General has taken initial measures under this article.

8. The contractor may also request the Council to review any decision of the Secretary-General taken pursuant to this article, without prejudice to any right of redress under the Convention.

Article 165 (bis)

Inquiries into incidents

1. The Council may establish an inquiry into the causes and circumstances surrounding any incident in which there has been serious personal injury or loss of human life. Any such inquiry shall be conducted by the Legal and Technical Commission.

2. Upon receipt of the findings of the Legal and Technical Commission the Council shall take appropriate measures and shall make its report publicly available.

Article 166 6/

Inspection

1. Each contractor shall permit the Authority to send its inspectors on board installations used by the contractor to carry out activities in the Area

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6/ It was suggested by some delegations that all references to inspectors found in separate parts of the mining code should be included in one chapter and that its wording should be general so as to cover various situations.

in order to monitor the contractor's compliance or to investigate in accordance with rules established by the Authority complaints alleging non-compliance with the terms and conditions of the contract and these regulations concerning the labour, health and safety aspects of carrying out activities in the Area.

2. Each contractor shall assist the inspectors in the performance of their duties and provide:

(a) Information on performance on all relevant equipment, facilities and personnel on installations,

(b) Access, at all reasonable times, to all relevant equipment, facilities and personnel on installations.

3. Each inspector shall have access to the records of any installation, including its log and documentation, and all other recorded data which are necessary for monitoring the contractor's compliance.

4. Inspectors shall avoid interference with safe and normal operations on installations.

5. Inspections shall not impose an undue burden on the operation of installations visited.

6. No contractor or employee of a contractor shall interfere with inspectors in the performance of their duties.

7. The Secretary-General shall give reasonable notice to the contractor of, inter alia:

(a) the name of the inspector;

(b) the length of time which the inspector is likely to be on board an installation; and

(c) activities of the inspector that are likely to require the assistance from personnel of the installation to facilitate the performance of his tasks.

8. The inspectors shall transmit their reports to the Secretary-General who will subsequently transmit them to the sponsoring State.

Article 166 (bis)

Disputes

Disputes concerning the interpretation or application of these regulations shall be submitted to either the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea or to special arbitration in accordance with Annex VIII of the Convention.

II. DOCUMENTS CONTAINING PROPOSALS FOR AMENDMENTS SUBMITTED BY VARIOUS STATES AND INTEREST GROUPS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA

LOS/PCN/SCN.3/WP.7
22 August 1985

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA (LOS/PCN/SCN.3/WP.6)

Proposal by the delegations of Belgium, Germany, Federal Republic of, Italy, Japan, the Netherlands and the United Kingdom of Great Britain and Northern Ireland

Article 25 bis

A certificate by a sponsoring state as to financial and technical capabilities shall be conclusive evidence of the matters referred to in article 24, paragraphs 3(c), (d) and (e) and in article 25.

LOS/PCN/SCN.3/WP.8
28 August 1986
ENGLISH
ORIGINAL: ARABIC

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
New York, 11 August-5 September 1986

EXPLANATORY TABLE SHOWING THE CONTRACTOR'S FINANCIAL OBLIGATIONS TO THE AUTHORITY 1/

Submitted by the delegation of Saudi Arabia

1. A fee of $500,000 for the cost of processing the application for exploration or exploitation or both. 2/

2.* An annual fixed fee of $1 million from the date of entry into force of the contract. 3/

3.* A production charge beginning one year from the date of commencement of commercial production. 4/

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* Note. Upon the expiry of one year from the date of commencement of commercial production, the contractor shall either pay the annual fixed fee or the production charge, whichever is greater. 5/

1/ Article 13 of Annex III of the Convention.

2/ Article 13, para. 2, of Annex III of the Convention.

3/ Article 13, para. 3, of Annex III to the Convention.

4/ Article 13, paras. 3, 4, 5 and 6, of Annex III of the Convention, and articles 72, 73 and 77 contained in document LOS/PCN/SCN.3/WP.6/Add.2.

5/ Article 13, para. 3 of Annex III of the Convention.

A contractor may choose between the following two methods:

(a) Production charge

Years 1-10: 5%

Subsequent years: 12%

(b) Production charge + Portion of net proceeds

Years 1-10: 2%

Subsequent years: 4%

Should the annual return on investment fall below 15%, the 4% figure shall be adjusted to 2%.

Percentage of return on investment	First period	Second period
0% - < 10%	35%	40%
10% - < 20%	42.5%	50%
20% or more	50%	70%

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LOS/PCN/SCN.3/WP.9
2 April 1987

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
Fifth session
Kingston, Jamaica
30 March-16 April 1987

Suggested amendments to the draft regulations on prospecting, exploration and exploitation of polymetallic nodules in the Area (LOS/PCN/SCN.3/WP.6/Add.2)

Proposals by the delegations of Belgium, Germany, Federal Republic of, Italy, Japan, Netherlands and United Kingdom of Great Britain and Northern Ireland

1. Article 2.5: (a) (i) Replace by: "all expenditures incurred by the contractor 6/ prior to the commencement of commercial production that are related to prospecting, exploration, and development of the productive capacity of the area covered by the contract and the activities related thereto for operations under the contract, 7/ including, inter alia, costs of machinery, equipment, ships, processing plant, construction, buildings, land, roads, research and development, interest, leases, licences and fees; 8/ and".

2. Article 2.6: Replace by: "'development costs of the mining sector' 12/ means the contractor's development costs related to the mining of the resources of the area covered by the contract, including, inter alia, application fee, annual fixed fee, costs of prospecting and exploration as well as research and development costs".

3. Article 2.7: (a) Replace by: "'Gross proceeds' means in any accounting year the gross revenues received by the contractor from the sale of polymetallic nodules, semi-processed metals and processed metals from the polymetallic nodules recovered from the area covered by the contract and any other monies attributable to the operations under the contract in accordance with the provisions of this part".

/...

4.	Article 2.7: (b)	Replace by: "The proceeds from the disposal of any capital assets previously included in contractor's development costs, to the extent such proceeds received exceed the contractor's development costs for that accounting year".
5.	Article 2.9:	Replace by: "'market value of the processed metals' means the revenue from the sale of the processed metals produced from the polymetallic nodules recovered from the area covered by the contract; if the metals are not sold the 'market value of the processed metals shall be calculated as the product of the quantity of the processed metals and the average price for those metals during the relevant accounting year determined in accordance with Article 75'".
6.	Article 2.10:	Add: "Net operating losses may be carried forward for 5 or backward for 5 consecutive accounting years".
7.	Article 2.12: (a)	After: "inter alia" add: "costs of surveying of the contract area".
	(b)	After: "employee benefits" add: "contributions to pension-schemes".
8.	Article 2.12: (b)-(c)	Delete.
9.	Article 2.13:	Replace: "form" by: "forms".
10.	Article 2.14:	Replace: "For the purpose of ..." to "except that", by: "For the purpose of computing this ratio, the development costs of the mining sector shall be all expenditures according to Article 2.6 including expenditures for new equipment. Original costs for equipment replaced shall be deducted to the extent that these costs have been recovered according to Article 81". Delete the remainder, except for: "If the contractor engages in mining only, 'return on investment' means the ratio of the contractor's net proceeds in that year plus any interest ... less any interest included therein".

11. Article 71: (1) Add: "If the contract deals with exploration only, the operator shall pay an annual fixed fee of US$ □."

(6) Add at the end: "Such refunds shall be accompanied by interest at the prevailing commercial rate".

(7) Replace: "from the 1982 base year" by: "from the year of the approval of the first plan of work as the base year".

12. Article 72.3: Replace by: "the operator's choice may be changed not earlier than □* years after the last choice by notification to the Authority within 90 days of the end of the preceding accounting year, unless the Authority approves of a change earlier".

13. Article 73: (1-a) (2-a) □ per cent for the first period of commercial production*

(1-b) (2-b) □ per cent for the second period of commercial production*

Delete: "as a result of the payment of the production charge at 4 per cent".

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* The appropriate figures should be determined at a later stage.

14. Article 74: Replace by:

"1. Within 90 days after the end of each accounting year the contractor shall submit to the Authority, its calculation of the production charge for that year and certify that the calculation is in compliance with these regulations. At that time the contractor shall make payment of the amount so calculated.

2. Each contractor shall make available to the accountants such data as are required to determine that the calculation is in compliance with these regulations.

3. The accountants shall verify such compliance and report to the Authority within 60 days after the date of the contractor's submission.

4. If the Authority considers that the calculation of the contractor is not in compliance with these regulations, it shall consult with the contractor. If these consultations do not lead to an agreement within one month Art. 87 shall be applicable."

15. Article 75: Add, at the beginning of the first sentence "In undertaking the calculations mentioned in article 74, if"

Replace the second sentence by: ""In all other cases, the contractor shall submit a fair price to the Authority. If the Authority does not consider it as a fair price, it shall consult with the contractor and in case consultations remain unconclusive, Article 87 shall be applicable."

16. Article 76 (1): Replace: "for each half year" by: "for each year".

Replace: "within 14 days" by: "within a month".

(2) - (4): Delete.

17. Article 77: The figures applicable to the shares for the Authority should be left unspecified.

18. Article 79: (a): Delete.

(c): Delete.

19. Article 80: Replace by: "In any accounting period or part thereof any interest paid by the contractor in respect of the contractor's development costs, development costs of the mining sector, and the contractor's operating costs, shall be allowed. If the Authority considers that the debt-equity ratio and the rates of interest do not reflect existing commercial practice it shall consult with the contractor. If these consultations do not lead to an agreement within" [ ] months, Article 87 shall be applicable".

/...

20. Article 81: Timing of recovery should be left unspecified.

21. Article 82: (2): Replace: "multiplied by the change ..." by: "multiplied by the change of the average index of the accounting year in which such costs were incurred to the average of the current accounting year".

(3): Delete.

(4): Delete: "and the subsidiary rules and procedures of the Authority" and: "less the interim payments already made for that year".

(7): Replace by: "If the Authority considers that the calculation of the contractor is not in compliance with the regulations it shall consult with the contractor. If these consultations do not lead to an agreement within one month, Article 87 shall be applicable".

22. Article 85: (1): Delete.

(2): Replace by: "A contractor shall select its accountants from those who are eligible under the national law and practice of its sponsoring state".

(4): Delete.

(6): Delete.

23. Article 86: Delete.

LOS/PCN/SCN.3/WP.10
4 August 1987

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Special Commission 3
New York, 27 July-21 August 1987

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA (LOS/PCN/SCN.3/WP.6/Add.2)

Proposals by the delegations of Denmark and Norway

Article 76 - Replace by the following:

1. Within 90 days after the end of each accounting year the contractor shall submit to the Authority its calculations of the production charge for that year. The submission shall be accompanied by all data required to determine whether the calculation is in compliance with these regulations. At the same time the contractor shall make payment of the amount so calculated less the amount of the annual fixed fee paid for that year. If the production charge is not paid within the due date, interest shall be paid on the amount at a rate of ...

2. The Authority shall make available to the accountants the calculation and the data mentioned in paragraph 1. The accountants shall verify the compliance with these regulations and report to the Authority within 60 days after the contractor's submission.

3. The Authority shall then make its determination of the production charge for the relevant year. If the Authority considers that the calculation is not in compliance with these regulations, it shall consult with the contractor before making its determination. If the determination is more than the amount paid by the contractor for that year, the contractor shall pay the difference to the Authority with interest at the London Inter-Bank Offering Rate plus 1 per cent from the date the contactor's submission was due. If such determination is less than the amount paid by the contractor, the Authority shall pay the difference to the contractor

/...

with interest at the London Inter-Bank Offering Rate plus 1 per cent from the date when the contractor's submission was due or his overpayment was made, whichever date is the latest. This also applies in cases where the determination has been made subject to procedures according to article 87.

4. The Authority and the accountants may require such further information and documentation from the contractor that they find necessary to carry out their functions according to paragraphs 2 and 3.

Article 82 (3) to (7) - Delete and replace by the following:

3. Within 90 days after the end of each accounting year the contractor shall submit to the Authority its calculations of the Authority's share of attributable net proceeds for that year. The submission shall be accompanied by all data required to determine whether the calculation is in compliance with these regulations. At the same time the contractor shall make payment of the amount so calculated. If the Authority's share of attributable net proceeds is not paid within the due date, interest shall be paid on the amount at the rate of ...

4. The Authority shall make available to the accountants the calculation and the data mentioned in paragraph 3. The accountants shall verify the compliance with these regulations and report to the Authority within 60 days after the contractor's submission.

5. The Authority shall then make its determination of the Authority's share of attributable net proceeds for the relevant year. If the Authority considers that the calculation is not in compliance with these regulations, it shall consult with the contractor before making its determination. If the determination is more than the amount paid by the contractor for that year, the contractor shall pay the difference to the Authority with interest at the London Inter-Bank Offering Rate plus 1 per cent from the date the contractor's submission was due. If such determination is less than the amount paid by the contractor, the Authority shall pay the difference to the contractor with interest at the London Inter-Bank Offering Rate plus 1 per cent from the date when the contractor's submission was due or his overpayment was made, whichever date is the latest. This also applies in cases where the determination has been made subject to procedures according to article 87.

6. The Authority and the accountants may require such further information and documentation from the contractor as they find necessary to carry out their functions according to paragraphs 4 and 5.

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LOS/PCN/SCN.3/WP.11
10 August 1987

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
New York, 27 July-21 August 1987

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA (LOS/PCN/SCN.3/WP.6/Add.2)

Proposals by the Group of 77

PART IV - FINANCIAL TERMS OF CONTRACTS

Article 70

Scope of this Part

This Part applies to contracts for exploitation, exploration and exploitation and only exploitation, of polymetallic nodules in the Area. 1/

General provisions

New article 71

Indexation

All financial obligations of the contractors to the Authority, as well as all his fees, costs, expenditures, proceeds and revenues referred to in this Part shall be adjusted by expressing them in constant terms, relative to 1982 base year.

1/ Based on A3/art.3/para. 4 (c).

New article 72

Payment of interest

All delayed payments or underpayments made by the contractor to the Authority and all refunds made by the Authority to the contractors shall be accompanied by interest at the prevailing commercial rate.

New article 73

Samples

For the purposes of making the calculations required in this Part:

(1) the Contractor shall submit to the Authority monthly composite samples of the nodules recovered and processed metals derived from these nodules;

(2) the samples should be in duplicate, in sealed containers and of a sufficient amount to be required by the subsidiary rules, regulations and procedures.

New article 74

Annual fixed fee

1. Each contractor shall pay to the Authority an annual fixed fee of $US 1 million from the date of entry into force of the contract.

2. The first payment of the annual fixed fee shall be made pro rata to the balance of the calendar year then remaining after the date of entry into force of the contract.

3. Each subsequent payment of the annual fixed fee shall be made on or before 1 January of each subsequent year.

4. From the date of commencement of commercial production, the contractor shall pay either the production charge or the annual fixed fee, whichever is greater.

5. If the approved date of commencement of commercial production is postponed because of a delay in issuing the production authorization, in accordance with Part V:

(a) the annual fixed fee shall be waived for the period of postponement. Payment of the annual fixed fee shall be made when the production authorization is issued, pro rata to the balance of the calendar year then remaining;

(b) the Authority shall refund at the end of that year an amount of the fixed fee, pro rata to the period of postponement during that year.

New article 75

Choice of financial contribution

1. Within a year from the commencement of commercial production, a contractor shall choose to make its financial contribution to the Authority by either:

(a) paying a production charge only, or

(b) paying a combination of a production charge and a share of net proceeds.

2. A contractor shall notify the Authority of its choice in writing.

3. The contractor's choice shall not be changed during the duration of the contract.

Articles 73, 74 and 75 as drafted in document LOS/PCN/SCN.3/WP.6/Add.2 become articles 76, 77 and 78.

New article 79

Quarterly returns and payment of production charge

Subject to the provisions of articles 77 and 78:

(1) the contractor shall submit to the Authority within fourteen (14) days from the end of each accounting quarter returns specifying:

(a) the quantity and metal content of polymetallic nodules produced from the contract area in that period;

(b) the quantity of processed metals produced therefrom in the quarter together with a statement of the processing recovery efficiency factor applicable;

(c) (i) the quantity of processed metals sold during the quarter by transactions on the international terminal market; or

(ii) the quantity sold by transactions other than through an international terminal market and the average price obtained therefrom. In this case, the contractor shall disclose the nature of such transactions;

(d) its calculation of the production charge payable for the quarter;

(2) the contractor shall together with the submission of its quarterly returns make payment to the Authority of the production charge calculated therein.

New article 80

Annual returns

1. Within sixty (60) days from the end of each accounting year the contractor shall submit to the Authority and the accountants certified true copies of its annual returns specifying the items provided for in article 79 (1).

2. The accountants shall within thirty (30) days of the receipt of the contractor's annual returns verify that the returns are in compliance with the rules and regulations contained herein and report to the Authority accordingly.

New article 81

Additional information

1. For the purpose of articles 78 and 79, the accountants and the Authority may require further information and documentation from the contractor as they deem necessary.

2. The contractor shall comply with such written request in the shortest possible term and, in any event, not later than 15 days after the receipt of the request.

New article 82

Yearly calculations

1. Pursuant to the requirements of articles 76, 77 and 78, the Authority shall within 30 days from the receipt of the report make a final determination of:

(a) the quantity and market value of the processed metals produced from polymetallic nodules recovered from the contract area and sold in that accounting year;

(b) (i) the average price of the processed metals in the international terminal market for that accounting year; or

otherwise as may be determined as a fair price in accordance with article (___) 2/ for that accounting year;

(c) the production charge payable by the Contractor for that accounting year.

2. Within the period specified by paragraph 1 the Authority shall notify the contractor of its determinations and the amount of production charge due for that accounting year.

3. The contractor shall make payment of the production charge due as notified by the Authority within 30 days of the receipt of such notice.

4. In the event of a dispute regarding the determinations of the production charge:

(a) the Authority and the contractor shall enter into consultations with a view to reaching an agreement;

(b) where a dispute subsists after consultations between the Authority and the contractor, the contractor shall make payment of the production charge for the accounting year in question in accordance with article 79 on the basis of the determination made and notified by the Authority.

2/ Article 83 as drafted in document LOS/PCN/SCN.3/WP.6/Add.2.

LOS/PCN/SCN.3/WP.11/Corr.1
13 August 1987

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
New York, 27 July-21 August 1987

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA (LOS/PCN/SCN.3/WP.6/Add.2)

Proposals by the Group of 77

Corrigendum

Page 1

1. After the descriptive title "Proposals by the Group of 77", insert the following paragraphs:

The purpose of the following amendments is to detail and specify the procedures to make the calculations and payments envisaged in article 13 of annex 3 of the Convention.

In preparing these amendments the Group of 77 has paid due regard to the important fact that the Preparatory Commission has no mandate to change or modify specific provisions of the Law of the Sea Convention.

2. For PART IV - FINANCIAL TERMS OF CONTRACTS
Read PART VI - FINANCIAL TERMS OF CONTRACTS

3. Replace the text of article 70 with the following:

This Part applies to contracts for exploration only, exploration and exploitation or exploitation only, of polymetallic nodules in the Area. 1/

LOS/PCN/SCN.3/WP.11/Add.1
16 March 1988

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PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
Sixth session
Kingston, Jamaica
14 March-8 April 1988

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA (LOS/PCN/SCN.3/WP.6/Add.2)

Proposals by the Group of 77

The purpose of the following amendments is to detail and specify the procedures to make the calculations and payments envisaged in article 13 of annex III of the Convention.

In preparing these amendments the Group of 77 has paid due regard to the important fact that the Preparatory Commission has no mandate to change or modify specific provisions of the Law of the Sea Convention.

In the light of document LOS/PCN/SCN.3/WP.11, articles 77 to 87 of document LOS/PCN/SCN.3/WP.6/Add.2 are renumbered as articles 83 to 93.

Article 84 (old art. 78)

Add at the end of paragraph 1 (d) after "development costs" the phrase "for the purposes of this article".

Article 85 (old art. 79)

Start the article the following way: "Attributable net proceeds, for any accounting year", and the rest remains the same.

/...

Article 86 (old art. 80)

Delete the phrase "in respect" at the end of the first line and beginning of the second and insert in its place the phrase "and computed as part".

After the phrase in the fourth line "all the circumstances" add the phrase "after consultation with the contractor".

Article 88 (old art 82)

In paragraph 1 add the phrase "in accordance with article 90" at the end, after the phrase "when payment is made".

In paragraph 7 replace both phrases "at the London Interbank Offering Rate plus 1 per cent" with the phrase "in accordance with article 72". (This article 72 is the one contained in document LOS/PCN/SCN.3/WP.11.)

New paragraph 8:

"In the event of a dispute regarding the determinations of the Authority's share of attributable net proceeds:

(a) The Authority and the contractor shall enter into consultations with a view to reaching an agreement.

(b) Where a dispute subsists after consultations between the Authority and the contractor, the contractor shall make payment of the Authority's share of attributable net proceeds for the accounting year in question, on the basis of the determination made and notified by the Authority in accordance with this article."*

Article 91 (old art. 85)

Replace paragraph 1 with the following:

"The Authority shall maintain a list of independent accountants, certified under the national laws of States Parties, for the purpose of carrying out auditing in compliance with this Part and the subsidiary rules and procedures."

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* This paragraph has to be complemented when a final decision is made regarding whether there will be a general settlement of disputes scheme, applicable to all Parts of the Code or only to the financial terms of contracts. In both cases, the settlement of disputes scheme should have detailed provisions regarding this Part.

Replace paragraph 2 with the following:

"A contractor shall select its accountants from such a list. In making that selection no accountants shall be eligible for this purpose of the independent certification of the contractors' accounts if such accountants have provided services to that contractor or its affiliates during the three calendar years prior to the date of selection."

Add at the end of paragraph 3, after the words "commencement of commercial production", the phrase "certifying that the requirements of paragraph 2 of this article have been fulfilled".

Add at the end of paragraph 7, after the words "paid by the Authority", the phrase "in accordance with the subsidiary rules and procedures".

LOS/PCN/SCN.3/WP.12
13 August 1987

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PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
New York, 27 July-21 August 1987

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA (LOS/PCN/SCN.3/WP.6/Add.2)

Proposals by the delegations of Belgium, Germany, Federal Republic of, Italy, Japan, Netherlands and United Kingdom of Great Britain and Northern Ireland

Article 2

(14) "return on investment" means in any accounting year the ratio of attributable net proceeds in that year to the development costs of the mining sector as at the end of the preceding accounting year.

If the contractor engages in mining only, "return on investment" means the ratio of contractor's net proceeds in that year to the contractor's development costs as at the end of the preceding accounting year.

For the purpose of computing these ratios, the development costs of the mining sector shall be all expenditures according to Article 2.6 including expenditures for new equipment. Original costs for replacement equipment shall be deducted to the extent that these costs have been recovered according to Article 81.

/...

Article 79

In any accounting year, attributable net proceeds 57/ shall be the product of the contractor's net proceeds and the ratio as at the end of the preceding accounting year of the contractor's development costs in the mining sector to the contractor's development costs.

For the purpose of calculating the attributable net proceeds the production charge shall not be deducted from the gross proceeds but from the product mentioned above.

If the contractor engages in mining only, attributable net proceeds shall be the whole of the contractor's net proceeds. 58/

LOS/PCN/SCN.3/WP.13/Rev.1
15 August 1988

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
New York, 15 August-2 September 1988

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA (LOS/PCN/SCN.3/WP.6/Add.4)

Proposals by the delegations of Belgium, Germany, the Federal Republic of, Italy, Japan, the Netherlands and the United Kingdom of Great Britain and Northern Ireland

PART VII

TRANSFER OF TECHNOLOGY UNTIL TEN YEARS AFTER COMMENCEMENT OF COMMERCIAL PRODUCTION BY THE ENTERPRISE

Article 90

Scope of these regulations

1. These regulations on transfer of technology apply to exploration and exploitation of polymetallic nodules in the Area.

2. The undertakings required by article 92 shall be included in each contract for carrying out activities in the Area until 10 years after commencement of commercial production by the Enterprise, and may be invoked and be given effect only during that period.

3. In the case of joint ventures with the Enterprise, the transfer of technology shall be in accordance with the terms of the joint venture agreement.

/...

Article 91

Use of terms

1. For the purposes of these regulations:

"technology" is defined as the specialized equipment and technical know-how, including manuals, designs, operating instructions, training and the technical advice and assistance, necessary to assemble, maintain and operate a viable system and the legal right to use these items for that purpose.

2. The transfer of the technology shall be on a non-exclusive basis.

Article 91 (bis)

General provision of information

1. When submitting a plan of work every applicant shall:

(a) Make available to the Enterprise a general description of the equipment and methods to be used in carrying out the plan of work and other relevant, non-proprietary information about characteristics of such technology;

(b) Indicate where the same or similar technology, or components thereof, is available.

2. The applicant shall, within [90] days of the introduction of a substantial technological change or innovation in the equipment and methods to be used in carrying out the plan of work, inform the Council in writing of the revisions to the general description and non-proprietary information.

Article 91 (ter)

Assistance to be provided

The contractor shall, during the period mentioned in article 90, paragraph 2, provide assistance to the Enterprise, at its request, in obtaining the same or equally efficient and useful technology on the open market through purchase, licensing or other appropriate agreements or arrangements on fair and reasonable commercial terms and conditions. Such assistance shall include:

(a) Identification of potential developers and suppliers of such technology known to the contractor;

(b) Advice on, and evaluation of, the terms and conditions upon which such technology is offered;

(c) In the course of the Enterprise's negotiations with potential suppliers of technology, advice concerning methods by which this technology can be obtained on the commercial terms and conditions most favourable to the Enterprise.

Article 92

Undertakings

Every contract for carrying out activities in the Area shall contain an undertaking by the contractor to enter into good faith negotiations with the Enterprise, upon the request of the Council, in accordance with articles 94 and 95, with a view to making available to the Enterprise on fair and reasonable commercial terms and conditions the technology, or components thereof, which the contractor uses in carrying out activities in the Area under the contract. Where the contractor is not legally entitled to transfer the technology, the contractor shall undertake all reasonable efforts to acquire the right to transfer the technology if it is possible to do so without incurring substantial costs.

[Article 93]

Article 94

Procedures

1. The Enterprise shall request the Council to invoke the undertakings set out in article 92 only if it finds that it is unable to obtain the same or equally efficient and useful technology on the open market on fair and reasonable commercial terms and conditions, for the exploration and exploitation of an area for which a plan of work has been approved in accordance with annex IV, article 12, of the Convention.

2. The Enterprise shall make all reasonable efforts to obtain such technology on the open market.

3. For the purpose of determining its policy for the acquisition of technology the Enterprise shall conduct a full market survey of potential suppliers which shall take account of existing patents and the relevant advisory services of business associations, universities, and scientific institutes.

4. Thereafter, the Enterprise shall publish a notice of its requirements for technology in appropriate publications.

5. The Enterprise shall issue invitations to tender on the basis of open tender procedures under which all interested suppliers may submit a tender. The technical specifications prescribed in the tender documentation provided to potential suppliers shall be in terms of performance rather than design and be based, where appropriate, on international standards. These specifications shall not be prepared or applied in a manner which restricts the range of possible offers of

appropriate and efficient technology. There shall be no requirement or reference to a particular trade mark or name, patent, design or type, specific origin or producer, unless there is no sufficiently precise or intelligible way of describing the required technology and provided that words such as "or equivalent" are included in the tender. Any prescribed time-limit shall be adequate to allow potential suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time-limit the Enterprise shall, consistent with its reasonable needs, take into account such factors as the complexity of the proposed purchase, the extent of sub-contracting anticipated, and the normal time for transmitting tenders by mail.

6. If the Enterprise concludes that open tendering procedures have not led to a result which meets the requirements of the tender, it shall use single tendering procedures to establish direct contact with individual suppliers.

7. Before the Enterprise concludes that it is unable to obtain the technology on fair and reasonable commercial terms and conditions through the tendering procedures, it shall request contractors to assist it pursuant to article 91 (ter) to obtain such technology on such terms and conditions.

Article 95

Action by the institutions

1. If the efforts pursuant to article 94 are not successful, the Governing Board of the Enterprise may make a finding in accordance with its procedures that the Enterprise is unable to obtain the same or equally efficient and useful technology on the open market on fair and reasonable commercial terms and conditions.

2. If the Governing Board of the Enterprise makes such a finding, it shall request the Council to invoke the contractor's undertakings pursuant to article 92. This request shall be accompanied by a report on the efforts made by the Enterprise in accordance with article 94, paragraphs 2 to 7.

3. Upon the receipt of such a request the Council shall ask the Legal and Technical Commission to consider the report and make recommendations in accordance with its rules of procedure as to whether the undertakings should be invoked.

4. The Council shall be deemed to have approved the recommendations of the Legal and Technical Commission after a lapse of 30 days following receipt of the recommendations unless within that period the Council decides otherwise by consensus.

5. Upon approval by the Council of the recommendation to invoke the undertakings, the Secretary-General shall request the contractor to fulfil the undertakings pursuant to article 92.

Article 96

Limitations of the undertakings of the contractor

The contractor may decline to enter into negotiations if it can be demonstrated that:

(a) The Enterprise already has access to the technology through contractual arrangements;

(b) The technology used by the contractor in carrying out activities covered by the contract is technically inappropriate for the exploration or exploitation of the area for which a plan of work has been approved in accordance with annex IV, article 12, of the Convention;

(c) The contractor is prohibited by national security considerations from transferring the technology. A certificate from the Sponsoring State shall be taken as conclusive evidence of this.

Article 97

Disputes concerning undertakings

1. In the event that negotiations between the Enterprise and the contractor pursuant to article 92 do not result in an agreement within [60] days, either party may request the matter to be referred to an independent panel of experts.

2. The panel of experts shall give an opinion on whether:

(a) The Enterprise has made all possible efforts to obtain the relevant technology pursuant to article 94;

(b) A decision by the contractor to decline to enter into negotiations is justified in accordance with article 96;

(c) The contractor has fulfilled the undertakings pursuant to article 92.

3. The Enterprise and the contractor shall endeavour to reach agreement on the number and members of the panel from a list compiled by the Secretary-General upon nominations submitted by the States Parties, and their terms of appointment. If such agreement has not been reached within 45 days after one of them has made the request according to paragraph 1 of the present article, the Legal and Technical Commission shall appoint the panel from the aforementioned list in accordance with its rules of procedure. The members of the panel shall be individuals of both recognized competence in one or more of the fields of law, economics and finance, and of the highest reputation for fairness and integrity.

4. The Enterprise and the contractor, in seeking to reach agreement shall take due account of the opinion of the Panel of Experts.

5. If this procedure does not result in agreement, disputes as to whether the contractor has fulfilled the undertakings pursuant to article 92, subject to article 96, may be submitted by either party to binding commercial arbitration in accordance with UNCITRAL arbitration rules or the arbitration rules of the International Chamber of Commerce.

6. If the finding is that the contractor has not negotiated in good faith, the Authority may impose monetary penalties in accordance with annex III, article 18, paragraph 2. If the finding is that good faith negotiations have taken place but have not resulted in an offer from the contractor which is within the range of fair and reasonable commercial terms and conditions, the contractor shall be given 45 days to revise his offer in order to continue negotiations with the Enterprise.

Article 98

Fair and reasonable commercial terms and conditions

1. The terms and conditions offered by the contractor shall be determined to fall within the range of fair and reasonable commercial terms and conditions solely on the basis of the terms and conditions agreed in comparable cases, especially on current market prices for the same or similar technology. Terms and conditions at variance with those in comparable cases shall not be considered fair and reasonable if they are imposed on the basis of a monopoly position, or on the basis of a concerted effort to restrict competition.

2. The following shall be considered, inter alia, to be fair and reasonable commercial terms and conditions:

(a) The obligation of the Enterprise to keep confidential the technology transferred for an indefinite period, including provisions for sanctions such as the payment of damages in the event of non-compliance or the misuse of the information by the staff of the Enterprise;

(b) The obligation of the Enterprise not to transfer to third parties the technology received from the contractor;

(c) A limitation of the responsibility of the contractor for the application of the technology by the Enterprise;

(d) Obligations ensuring the protection and the proper handling of lease equipment;

(e) A limitation on the use of the technology by the Enterprise to exploration and exploitation in the Area;

(f) A provision for the security of payments by means of letters of credit or other devices;

(g) Provisions for binding commercial arbitration in case of disputes about the agreement to transfer technology.

[Articles 99 and 100]

Article 101

Consultation by a group of States Parties

1. If the Enterprise is unable to obtain on fair and reasonable commercial terms and conditions appropriate technology to enable it to commence in a timely manner the recovery and processing of minerals from the Area, the Council may convene a group of States Parties composed of those that are engaged in activities in the Area, those that have sponsored entities which are engaged in activities in the Area and other States Parties having access to such technology.

2. This group shall consult together and each State Party shall take appropriate measures within its own legal system to ensure that such technology is made available to the Enterprise on fair and reasonable commercial terms and conditions.

Article 101 (bis)

Disclosure of information

These regulations shall not be deemed to require a State Party to supply information, the disclosure of which is contrary to the essential interests of its security.

LOS/PCN/SCN.3/WP.14
8 March 1989

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PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
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FOR THE LAW OF THE SEA
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Seventh session
Kingston, Jamaica
27 February-23 March 1989

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA (LOS/PCN/SCN.3/WP.6/Add.4)

Proposals by the Group of 77

PART VII

TRANSFER OF TECHNOLOGY

Article 90

Scope of this Part

These regulations on transfer of technology apply to exploration for and exploitation of polymetallic nodules in the Area, including their processing.

Article 91

Use of terms

For the purpose of this Part:

"Technology" means the specialized equipment and technical know-how, including manuals, designs, operating instructions, training and technical advice and assistance, necessary to assemble, maintain and operate a viable

system and the legal right to use these items for that purpose on a non-exclusive basis.

Article 91 bis

Assistance to be provided by the contractor for obtaining technology

Every contractor shall, during the period the contract is in force, provide assistance to the Enterprise, at its request, in obtaining the same or equally efficient and useful technology on the open market through purchase, licensing or other appropriate agreements or arrangements on fair and reasonable terms and conditions. Such assistance shall include:

(a) Identification of owners and/or suppliers of such technology;

(b) Identification of the persons using such technology, either in full or in part;

(c) Evaluation of the techno-economic efficacy of such technology;

(d) Evaluation of the terms and conditions upon which such technology is offered;

(e) Any other relevant information as may be required by the Enterprise, in particular for the establishment of a data-base.

Article 91 ter

Assistance to be provided by States Parties for obtaining technology

States Parties shall, in co-operation with the Authority, initiate and promote:

(a) Programmes for the transfer of technology to the Enterprise and to developing States with regard to activities in the Area, including, inter alia, facilitating the access of the Enterprise and of developing States to the relevant technology, under fair and reasonable terms and conditions;

(b) Measures directed towards the advancement of the technology of the Enterprise and the domestic technology of developing States, particularly by providing opportunities to personnel from the Enterprise and from developing States for training in marine science and technology and for their full participation in activities in the Area.

Article 92

Undertakings in contracts on transfer of technology which the contractor is legally entitled to transfer

1. Every contractor shall make available to the Enterprise, on fair and reasonable commercial terms and conditions, whenever the Authority 1/ so requests, the technology which it uses in carrying out activities in the Area under the contract, which the contractor is legally entitled to transfer.

2. Every contract for carrying out activities in the Area shall contain undertakings to that end.

Article 93

Undertakings in contracts on transfer of technology which the contractor is not legally entitled to transfer

1. Every contractor shall:

(a) Obtain a written assurance from the owner 2/ of any technology used in carrying out activities in the Area under the contract which is not generally available in the open market, and which is not covered by article 92, that the owner will, whenever the Authority so requests, make that technology available to the Enterprise under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions, to the same extent as made available to the contractor. Such assurance shall be legally binding and enforceable. The document containing the assurance shall be submitted to the Authority along with the application for the approval of the plan of work, and in any case no later than the date of the start of operations under the contract;

(b) Facilitate, upon the request of the Enterprise, the acquisition of any such technology under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions, if the Enterprise decides to negotiate directly with the owner of the technology.

2. If the document containing the assurance required by paragraph 1 (a) is not submitted to the Authority within the time specified therein, the technology in question shall not be used by the contractor in carrying out activities in the Area.

1/ For the purpose of contract administration, whenever the Authority is mentioned in these regulations, such mention is deemed to refer to the Secretary-General.

2/ The term "owner" shall, for the purposes of these regulations, include assignees, licensees, or suppliers of technology, as the case may be.

3. Every contractor shall also acquire from the owner, by means of an enforceable contract, upon the request of the Enterprise and if it is possible to do so without substantial cost to the contractor, the legal right to transfer to the Enterprise any technology used by the contractor in carrying out activities in the Area under the contract which the contractor is otherwise not legally entitled to transfer and which is generally not available on the open market.

4. Every contract for carrying out activities in the Area shall contain undertakings by the contractor in respect of the obligations set out in paragraphs 1 (a) and (b) and 3 above.

5. In cases where there is a substantial corporate relationship between the contractor and the owner of the technology, the closeness of this relationship and the degree of control or influence shall be relevant to the determination whether all feasible measures have been taken to acquire such a right.

6. In cases where the contractor exercises effective control over the owner, failure to acquire from the owner the legal right shall be considered relevant to the contractor's qualification for any subsequent application for approval of a plan of work.

Article 94

Procedure for obtaining technology

1. Before requesting that the Authority invoke such undertakings, the Enterprise shall have complied with the following procedures:

(a) (i) The Enterprise shall make every effort to obtain the same or equally efficient and useful technology on the open market on fair and reasonable commercial terms and conditions, pursuant to Annex IV, article 12, paragraph 3, of the Convention. In doing so, the Enterprise shall make use of the facility provided for in article 91 bis above;

(ii) In the process of the acquisition of technology, the Enterprise shall conduct a survey of potential suppliers, taking into account existing patents and related know-how and any other patentable invention as may be relevant. It may for these purposes utilize the advisory services of business or trade associations, scientific research institutions and any other appropriate organization, including government agencies. In fixing time-limits for the submission of tenders, the Enterprise shall be guided by its commercial and operational needs, taking due account of a reasonable time period for potential suppliers to submit tenders;

(b) If the Enterprise is unable to obtain such technology on such terms and conditions, the Governing Board of the Enterprise shall make a finding to that effect in accordance with its procedures;

(c) If the Governing Board of the Enterprise makes such a finding, it shall request the Authority to invoke the contractor's undertakings.

2. Upon the receipt of such a request, the Secretary-General, on behalf of the Authority, shall invoke the undertakings and so inform the Council and the Enterprise.

3. In the case of technology which the contractor is legally entitled to transfer, the Secretary-General shall request that the contractor promptly commence negotiations with the Enterprise to make available to it the technology which the contractor uses in carrying out activities in the Area under the contract, on fair and reasonable commercial terms and conditions.

4. In the case of technology which the contractor is not legally entitled to transfer, the Secretary-General shall request the contractor either:

(a) To enter promptly into negotiations with the owner of the technology to carry out the undertakings specified in article 93, paragraph 3; such negotiations shall be completed within 60 days of the date of receipt of the request by the Secretary-General, and may be extended with the approval of the Secretary-General in consultation with the Enterprise; or

(b) To facilitate the acquisition of any such technology, in case the Enterprise decides to negotiate directly with the owner of the technology in accordance with article 93, paragraph 1 (b).

5. The engagement of the Enterprise in the negotiations specified in paragraphs 3 and 4 above shall be undertaken pursuant to Annex IV, article 6 (f), of the Convention. Such negotiations shall be completed in [60] days, unless otherwise extended by agreement of the parties. The parties shall keep the Authority informed of the results of such negotiations.

6. The specific agreement between the contractor or the owner of technology and the Enterprise for the use of such technology shall be in the form of licences or other appropriate arrangements and shall be supplementary to the contract between the Authority and the contractor.

Article 95

Undertakings in contracts with respect to transfer of technology for the benefit of developing States

1. Every contract shall take the same measures as prescribed in articles 92 and 93 of this Part for the benefit of a developing State or group of developing States which has entered into a joint venture with the Enterprise or submitted an application for approval of a plan of work for carrying out activities in a reserved area.

2. Every contract for carrying out activities in the Area shall contain undertakings by the contractor to that end.

3. Such measures shall be limited to the use of the technology in the exploitation of the part of the area proposed by the contractor which has been designated to be a reserved area pursuant to Annex III, article 8, of this Convention.

4. The contractor shall not be obligated to take such measures if:

(a) Such activities by the developing State or group of developing States would involve transfer of technology to a third State or the nationals of a third State;

(b) Such technology has been requested by the Enterprise or transferred by that contractor to the Enterprise.

Article 96

Procedure for obtaining technology by developing States

1. Before requesting the Secretary-General to invoke the undertakings referred to in article 95, paragraph 2, the States mentioned in article 95, paragraph 1, shall follow mutatis mutandis the procedures set forth in article 94, paragraph 1.

2. Upon the receipt of such a request, the Secretary-General shall follow mutatis mutandis the procedures set forth in article 94, paragraphs 2, 3, 4, 5 and 6.

Article 96 bis

Joint ventures

In the case of joint ventures with the Enterprise, transfer of technology will be in accordance with the terms of the joint venture agreement.

Article 96 ter

Training

The contractor shall draw up practical programmes for the training of personnel of the Authority and of developing States, including the participation of such personnel in all activities in the Area which are covered by the contract, in accordance with article 144, paragraph 2, of the Convention.

Article 97

Limitations on undertakings

The undertakings required by articles 92, 93 and 95 shall be included in each contract for carrying out activities in the Area until 10 years after commencement of commercial production by the Enterprise, and may be invoked during that period.

Article 98

Notification of revisions

Every operator shall notify the Authority in writing of revisions in the description and information made available pursuant to article 32 3/ of these regulations to the Authority of the equipment and methods to be used, and other relevant non-proprietary information about the characteristics of such technology, and information as to where such technology is available within 90 days of the introduction of a substantial technological change or innovation in the equipment and methods to be used in carrying out activities in the Area.

Article 99

Disputes concerning a contractor's undertakings

1. Disputes as to whether offers made by the contractor or the owner of the technology are within the range of fair and reasonable commercial terms and conditions may be submitted by the contractor or the owner of the technology, by the Authority or by the Enterprise to binding commercial arbitration in accordance with the UNCITRAL Arbitration Rules or such other arbitration rules as may be prescribed in the rules, regulations and procedures of the Authority.

2. If the finding is that the offer made by the contractor or the owner of the technology is not within the range of fair and reasonable commercial terms and conditions, the contractor or the owner of the technology shall be given 45 days to revise his offer to bring it within that range before the Authority takes any action under Annex III, article 18, of the Convention.

Article 100

Disputes concerning other undertakings required by these regulations

1. Disputes concerning undertakings required by articles 92, 93, 95 and 98 of these regulations, other than those submitted under article 99 of these regulations, shall be subject to compulsory settlement in accordance with Part XI of the Convention.

3/ Document LOS/PCN/SCN.3/WP.6.

2. If the contractor is found to be in violation of these undertakings, the contractor's rights under the contract may be suspended or terminated or monetary penalties may be ordered under Annex III, article 18, of the Convention.

Article 101

Consultation by a group of States Parties

1. If the Enterprise is unable to obtain on fair and reasonable commercial terms and conditions appropriate technology to enable it to commence in a timely manner the recovery and processing of minerals from the Area, either the Council or the Assembly may convene a group of States Parties composed of those which are engaged in activities in the Area, those which have sponsored entities which are engaged in activities in the Area and other States Parties having access to such technology.

2. This group shall consult together and shall take effective measures to ensure that such technology is made available to the Enterprise on fair and reasonable commercial terms and conditions.

3. Each such State Party shall take all feasible measures to this end within its own legal system.

LOS/PCN/SCN.3/WP.14/Corr.1
17 May 1989

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Special Commission 3
Seventh session
Kingston, Jamaica
27 February-23 March 1989

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA (LOS/PCN/SCN.3/WP.6/Add.4)

Proposals by the Group of 77

Corrigendum

Page 2, article 91 ter

The title of the article should read

Co-operation between States Parties and the Authority for transfer of technology

LOS/PCN/SCN.3/WP.15
27 August 1991

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY AND
FOR THE INTERNATIONAL TRIBUNAL FOR
THE LAW OF THE SEA
Special Commission 3
New York, 12-30 August 1991

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA - PART X. ACCOUNTING PRINCIPLES AND PRODEDURE
(LOS/PCN/SCN.3/WP.6/Add.7)

Proposals by the Group of 77

Article 2 (Use of terms)

Paragraph 4 (new): "For the purposes of this part, 'significant gain or loss' means any total inventory adjustment exceeding a percentage of the total of physical assets or of inventory before adjustment as shall be agreed upon between the Authority and the contractor, in conformity with generally recognized accounting principles."

Article 137 (Scope of this Part)

Paragraph 1: "The regulations contained in this Part provide a uniform system of accounting to record all financial transactions under the contract, including those related to expenditures incurred prior to the commencement of commercial production which are directly related to the development of the productive capacity of the area covered by the contract and the activities related thereto for operations under the contract." 1/

1/ A/3 (13) (6) (h) (i).

/...

Paragraph 1 (bis): "The regulations contained in this Part further provide a uniform system of accounting to provide a system and standards for handling funds, materials and equipment and to provide the basis for preparing the reports required by the regulations under the contract."

Article 139 (Currencies)

Paragraph 1: "The United States dollar shall normally be the unit of account. If a transaction is carried out in another currency, the amount of the transaction shall be converted into United States dollars or another universal unit of account approved by the Authority, at the average of the buying and selling rates quoted by the International Monetary Fund for the date when payment is due."

Article 140 (Accounts and manuals)

Paragraph 1: Delete the words "together with the Accounting Manual".

Paragraph 1 (bis): "The comprehensive chart of accounts and related account definitions shall be consistent with the Accounting Manual submitted by each contractor for approval by the Authority within 60 days from the effective date of the contract".

Article 141 (Accounting for materials and supplies)

Paragraph 2: Substitute the original wording with the following single paragraph: "Materials and supplies furnished from the contractor's stocks shall be charged in accordance with a percentage scale commensurate with their depreciated value agreed upon by the Authority and the contractor."

Paragraph 4: Deleted.

Paragraph 5: Delete the words "and 4".

Paragraph 7: Substitute the original wording with the following: "Each contractor shall conduct, at least once a year or, if special circumstances so warrant, upon the request of the Authority, a physical inventory of the controllable materials maintained by the contractor."

Paragraph 8: Delete the words ", if feasible,".

Paragraph 9: Delete the final sentence.

Paragraph 10 (new): "The costs referred to in this Part shall not be interpreted as including payments of corporate income taxes or similar charges levied by States in respect of the operations of the contractor." 2/

Article 142 (Accounting for equipment)

Paragraph 2: "Each contractor shall conduct, every five years, a physical inventory of capitalized physical assets. Each contractor shall conduct more frequent inventories at the request of the Authority."

Paragraph 4: Delete the final sentence.

Article 143 (Personnel costs)

Paragraph 2: Add the following words at the beginning: "Other costs directly incurred in operations under the contract, such as ...".

Add the following new paragraph: "The salaries, wages and expenses of technical employees directly employed in operations under the contract shall not be included in the overhead costs provided in article 151 but shall be charged directly."

Article 145 (bis)

"Costs for the transfer of technology by the contractor to the Enterprise in respect of the area covered by the contract shall be charged, in the event the contractor is requested to acquire from the owner of the technology the legal right to transfer to the Enterprise any technology used by the contractor in carrying out activities in respect of the area covered by the contract which he is not otherwise legally entitled to transfer." 3/

Article 146 (Charges for affiliates)

Same as former article 147 with the addition of the words "such as competitive bidding" after the words "such other terms and conditions".

2/ A 3 (13) (6) (p).

3/ A3 (5) (3) (c).

Article 147 (Charges for third-party contracts)

Paragraph 1: "The actual direct costs of contracts for technical and other services supplied by third parties shall be charged, provided that such costs are reasonable and necessary and are not higher than those generally charged for comparable work and services, and that, to the extent possible, have resulted from competitive bidding among potential suppliers."

Paragraph 1 (bis): "The policies followed by the contractor with regard to determining the prices for transactions undertaken with any person, firm or company that, directly or indirectly, controls, is controlled by or is under common control with a contractor shall be disclosed in the financial reports submitted by the contractor to the Authority." 4/

Article 151 (Overhead and administrative costs)

Paragraph 2: "Overhead costs not included in paragraph 1 incurred after the effective date of the execution of the contract shall be charged in accordance with a specific percentage to be agreed upon between the Authority and the contractor."

Paragraph 3: Deleted.

Paragraph 3 (bis): "Overhead costs ... shall be charged in accordance with a specific percentage to be agreed upon between the Authority and the Contractor."

Add the following words after "contractor's negligence": "wilful misconduct".

Paragraph 4: Make the following addition: "The agreed rates ..."

Article 154 (Financial reports)

Paragraph 5: "Each quarterly report shall be prepared on a monthly and aggregate basis and shall be sent to the Authority within 45 days after the end of each quarter. The Authority may make comments and propose adjustments to any report provided that such comments and proposed adjustments are made in writing within six months from the date of submission of a quarterly report."

Paragraph 6: "Each annual report shall be audited and shall be sent to the Authority within 90 days after the end of each calendar year. The

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4/ United Nations Centre on Transnational Corporations (UNCTC), Conclusions on Accounting and Reporting by Transnational Corporations (1988) (United Nations publication, Sales No. E.88.II.A.18), para. 164.

Authority may make comments and propose adjustments to an annual report provided that such comments and proposed adjustments are made in writing within five years from the date of submission of the report."

Article 155 (Inspection and audit)

Paragraph 1: Substitute the original wording by the following paragraph: "An annual audit shall be carried out by reputable and independent accountants at the cost of the contractor. Notwithstanding the annual audit and if special circumstances so warrant, the Authority may designate reputable and independent accountants to conduct at its expense an additional audit. An additional audit may also be carried out by reputable and independent accountants, upon the request of the Authority and at the cost of the contractor, in the event that the accounts submitted to the Authority are found to be inaccurate or incomplete."

Paragraph 3: Add the words "designated by the Authority" after "accountants".

Article 156 (Retention of books, records and documents)

Paragraph 1: "All books, records and documents referred to in article 155 shall be maintained for a period commensurate with the useful life of the equipment and material used by the contractor and, in any event, not less than seven years from the date of issue."

New article 158 (Penalties)

1. The Authority may seek redress for irregularities which, as the result of an independent audit, are traceable to the inadequate or incomplete compliance by the contractor or the Enterprise with the provisions of this Part. The Authority may also request that the contractor or the Enterprise adjust its accounts accordingly.

2. In the event that the contractor or the Enterprise wilfully persists in failing to comply with a request made by the Authority pursuant to this Part, the Authority may impose upon the contractor or the Enterprise monetary penalties proportionate to the seriousness of the violation.

New article 159 (Disputes)

Disputes concerning the interpretation or application of this Part shall be submitted to either the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea or to the arbitration tribunal constituted in accordance with Annex VII of the Convention.

LOS/PCN/SCN.3/WP.15/Add.1
28 August 1991

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 3
New York, 12-30 August 1991

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA - PART X. ACCOUNTING PRINCIPLES AND PROCEDURE (LOS/PCN/SCN.3/WP.6/Add.7)

Proposals by the Group of 77

Addendum

Article 143 (Personnel costs)

Substitute the word "net" for "gross".

Article 150 (Legal costs)

Substitute "provided such costs were incurred after the effective date of the contract" with "provided such costs were directly related to the development of the productive capacity of the area covered by the contract and the activities related thereto for operations under the contract".

LOS/PCN/SCN.3/WP.16
23 July 1992

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED
AUTHORITY AND FOR THE
INTERNATIONAL TRIBUNAL FOR
THE LAW OF THE SEA
Special Commission 3
New York, 10-21 August 1992

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA

PART X. ACCOUNTING PRINCIPLES AND PROCEDURE

(LOS/PCN/SCN.3/WP.6/Add.7)

Proposals submitted by the European Economic Community on behalf of the Community and its member States

Article 2 (Use of terms)

Paragraph 1, first sentence

"(1) 'Accounting Manual' means a manual, approved by the Secretary-General, containing the chart of accounts and instructions for the recording of transactions of operations and the preparation and distribution of financial reports."

In paragraph 2 the phrase "analyses, working papers and reports" should be deleted.

Paragraph 3: second sentence should be deleted.

Article 81 (Accounting principles)*

Paragraph 1 should read as follows:

"(1) All books and accounting records shall be kept, and all costs, expenditures, proceeds and revenues determined and recorded, in conformity with generally recognized accounting principles approved by the Council on the recommendation of the Finance Committee."

Paragraph 2 should read as follows:

"The Council on the recommendation of the Finance Committee shall from time to time review such principles and practices to ensure that they are generally recognized and consistent with such accepted practices."

Paragraph 3 should read as follows:

"All costs, expenditures, proceeds and revenues and all determinations of prices and values referred to in this part shall be based on market prices. Charges for transactions with any person, firm or company that, directly or indirectly, controls, is controlled by or is under common control with a contractor, for services, materials, equipment and other costs, shall be at actual cost on arm's length prices and such other terms and conditions as would have applied in a normal commercial manner in the ordinary course of business had the transactions occurred between unrelated parties or if the parties were not in any special relationship."

Paragraph 4 (new)

"The determination of arm's length prices shall be guided by the principles adopted for, and the interpretation given to, arm's length transactions by the relevant bodies of the United Nations and other international organizations."

Paragraph 5 (new)

"In all other cases prices shall be determined on the basis of actual costs."

Article 137 (Scope of this Part)

Article 137 should be moved to become paragraph 3 of article 70 and should read as follows:

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* Text of Article 81 is in document LOS/PCN/SCN.3/WP.6/Add.2/Rev.1.

"The provisions on accounting contained in this Part provide guidance on the system of financial recording for those contractors that choose in accordance with article 13 (4) of Annex III LOSC to pay a combination of a production charge and a share of net proceeds, to record all financial transactions, funds, materials and equipment necessary to determine the net proceeds and the share that has to be paid to the Authority."

Article 138 (Accounting principles)

Should be deleted.

Article 139 (Currencies)

Should be deleted.

Article 140 (Accounts and manuals)

This article should be renumbered as article 80A and should read as follows:

"(1) Contractors that chose to pay a combination of a production charge and a share of net proceeds shall, together with their decision on the mode of payment, submit for approval by the Finance Committee a comprehensive chart of accounts and related account definitions, together with the Accounting Manual for use under the contract.

"(2) A complete set of books of accounts shall be kept at the relevant contractor's principal place of business. If a relevant contractor has two or more principal places of business, he shall determine at which principal place of business a complete set of books of account is kept and inform the Authority accordingly."

Article 141 (Accounting for materials and supplies)

Article 141 should be renumbered as article 81A and amended as follows:

In paragraph 4 "Authority" should be replaced by "Secretary-General".

Paragraph 6 should be deleted.

Paragraph 7 should be renumbered as paragraph 6 and should read as follows: "Each contractor shall conduct, once a year, or, if special circumstances warrant it, upon the request of the Secretary-General, a physical inventory of the controllable materials which it maintains. The inventory shall be transmitted to the Secretary-General."

In paragraph 8 the phrase ", if feasible," should be deleted. Paragraph 8 should be renumbered as paragraph 7. And "Authority" should be replaced by "Secretary-General".

In paragraph 9, third sentence, the phrase "for approval" should be deleted. Paragraph 9 should be renumbered as paragraph 8. And "Authority" should be replaced by "Secretary-General".

Article 142 (Accounting for equipment)

Article 142 should be renumbered as article 81B and amended as follows:

In paragraph 2, between the words "or" and "upon" the following phrase should be inserted: ", if special circumstances warrant it,". And "Authority" should be replaced by "Secretary-General".

In paragraph 3 "Authority" should be replaced by "Secretary-General".

In paragraph 4, third sentence, the phrase "for approval" should be deleted. And "Authority" should be replaced by "Secretary-General".

Article 143 (Personnel costs)

To be deleted.

Article 144 (Charges for training programmes)

To be deleted.

Article 145 (Charges for transfer of data)

To be deleted.

Article 146 (Charges for third-party contracts)

To be deleted.

Article 147 (Charges for affiliates)

To be deleted.

Article 148 (Rental payments)

To be deleted.

Article 149 (Insurance costs and losses)

To be deleted.

Article 150 (Legal costs)

To be deleted.

Article 151 (Overhead and administrative costs)

This article is to be renumbered as article 81C.

Article 152 (Credits)

To be deleted.

Article 153 (Duplication of costs, charges and credits)

To be deleted.

Article 154 (Financial reports)

Should be renumbered as article 81D and should read as follows:

"1. Each relevant contractor shall prepare an annual financial report.

"2. Each report shall consist of a profit-and-loss statement, a balance sheet and the calculation of the Authority's share of net proceeds for that year.

"3. The form of the report may be prescribed by the Secretary-General.

"4. Each report shall be a full and accurate financial report for the year covered.

"5. Each annual financial report shall be sent to the Secretary-General within 60 days after the end of each calendar year.

"6. Upon receipt of the financial report the Secretary-General shall make it available to the accountant, selected in accordance with article 85.

"7. The accountant shall verify whether the profit-and-loss statement, the balance sheet and the calculation of the Authority's share of net proceeds are in conformity with the books, accounting records and basic documents as well as with the present regulations.

"8. The accountant shall report his findings to the Secretary-General and the contractor within 60 days.

"9. If the accountant finds that the financial report and the calculation of the Authority's share of net proceeds is not in conformity with the present regulations and if the contractor does not agree with the findings of the accountant, the matter shall be discussed between the Secretary-General, the contractor and the accountants.

"10. If no agreement is reached within 30 days, the provision of article 87 on the settlement of disputes shall apply."

Article 155 (Inspection and audit)

Should be renumbered as article 85A and amended as follows:

Paragraph 1 should be deleted.

Paragraph 5 should be deleted.

Paragraph 7 should be deleted.

Article 156 (Retention of books, records and documents)

Should be renumbered as article 81D and amended as follows:

In paragraph 1 the reference to article 155 should be a reference to article 85A.

In paragraph 2 the reference to article 154 should be a reference to article 81C.

Article 157 (Enterprise)

Should be renumbered as article 87A and should read as follows:

"The accounting regulations in this part apply to the activities of the Enterprise in the Area if it chooses in accordance with article 13 (4) of Annex III to pay a combination of a production charge and a share of net proceeds to the Authority."